

Local 400, International Brotherhood of Electrical Workers and County of Ocean. Case 4-CC-1488

9 March 1984

DECISION AND ORDER

**BY CHAIRMAN DOTSON AND MEMBERS
HUNTER AND DENNIS**

On 29 July 1983 Administrative Law Judge James T. Youngblood issued the attached decision. The Respondent filed exceptions and a supporting brief, and the General Counsel filed cross-exceptions and a supporting brief.

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel.

The Board has considered the decision and the record in light of the exceptions and briefs and has decided to affirm the judge's rulings, findings,¹ and conclusions² and to adopt the recommended Order as modified.³

The General Counsel has excepted to the judge's failure to find that the Respondent engaged in unlawful "signal" activity on 9 and 10 December at neutral Gates 1 and 4. It is undisputed that, on those dates, the Respondent picketed solely at primary Gate 2 and stationed an individual as an "observer" at Gates 1 and 4. One witness for the General Counsel testified that, between the two openings at Gate 1, a picket sign was leaning against the fence near one observer, evidence that the General Counsel argues establishes the Respondent's object to induce secondary employees not to report to work despite the absence of actual picketing. How-

ever, another General Counsel witness (the County employee charged with monitoring the Respondent's activities during this dispute) did not remember any such sign, and a witness for the Respondent testified that no signs were located in the vicinity of the neutral gates. The judge did not explicitly resolve this testimonial conflict, and he made no finding that would reflect its implicit resolution. Because the judge failed to resolve the conflict in the General Counsel's evidence and in light of the judge's finding that the Respondent's actual picketing at Gates 1 and 4 on 29 November through 8 December and on 27 December was unlawful, we find it unnecessary to reach the question whether the Respondent also violated the Act on 9 and 10 December.

ORDER

The National Labor Relations Board adopts the recommended Order of the administrative law judge as modified below and orders that the Respondent, Local 400, International Brotherhood of Electrical Workers, Wall, New Jersey, its officers, agents, and representatives, shall take the action set forth in the Order as modified.

1. Substitute the following for present paragraph 1.

"1. Cease and desist from, in any manner or by any means, engaging in or inducing or encouraging any individual employed by Cornell Construction Company, Patock Construction Company, Thomas H. Barham Company, Inc., or any other person engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, or in any manner or by any means, threatening, coercing, or restraining Cornell Construction Company, Patock Construction Company, Thomas H. Barham Company, Inc., or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is: (a) to force or require Cornell Construction Company, or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of Cherry Steel Corporation or to cease doing business with Cherry Steel Corporation; (b) to force or require Patock Construction Company, Thomas H. Barham Company, Inc., or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of County of Ocean or to cease doing business with County of Ocean; and (c) to force or require County of Ocean or any other person to cease using, selling, handling, transporting, or otherwise dealing in the

¹ In affirming the judge's finding that the reserve gate system was properly established and maintained, we specifically note that the first telegram received by the Respondent on 30 November (which erroneously stated the location of the primary's gate) did not justify the Respondent's picketing at Gates 1 and 4 on that or any other date. Thus, the gates had been clearly marked for several months before the picketing began, a telegram correcting the error was delivered to the Respondent within 1 hour after it had received the erroneous one, and there was no evidence that the Respondent suffered any actual confusion because of the error.

² In his decision the judge stated that, if common situs picketing meets the criteria set forth in *Sailors Union (Moore Dry Dock)*, 92 NLRB 547, 549 (1950), "it will be determined to be legal." This is not a completely accurate statement of current law. We have long held that the *Moore Dry Dock* criteria "are merely evidentiary in nature and are not to be mechanically applied," and that "while compliance may give rise to a rebuttable presumption that picketing is primary, the totality of the evidence may establish an underlying secondary objective." *Carpenters Local 1622 (Robert Wood & Associates)*, 262 NLRB 1211, 1216 (1982). See also *Teamsters Local 126 (Ready Mixed Concrete)*, 200 NLRB 253, 254-255 (1972).

³ The General Counsel has excepted to the judge's failure to include in his recommended Order the precise language of the statutory provision violated here, the names of the employers involved, and the requirement that the Respondent furnish additional signed copies of the notice to the Regional Director for voluntary posting by the employers involved. We find merit in this exception and modify the Order accordingly. See for example *Electrical Workers IBEW Local 323 (Renel Construction)*, 264 NLRB 623 (1982).

products of Jaden Electric, a Division of Farfield Company, or to cease doing business with Jaden Electric, a Division of Farfield Company."

2. Insert the following as paragraph 2(b) and re-letter the present paragraph 2(b) as paragraph 2(c).

"(b) Deliver to the Regional Director for Region 4 signed copies of said notice sufficient in number for posting by Jaden Electric, a Division of Farfield Company; Cornell Construction Company; Cherry Steel Corporation; Patock Construction Company; Thomas H. Barham Company, Inc.; and the County of Ocean, those employers being willing, at all locations where notices to their employees are customarily posted."

3. Substitute the attached notice for that of the administrative law judge.

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS
POSTED BY ORDER OF THE
NATIONAL LABOR RELATIONS BOARD
An Agency of the United States Government

WE WILL NOT in any manner or by any means engage in or induce or encourage any individual employed by Cornell Construction Company, Patock Construction Company, Thomas H. Barham Company, Inc., or any other person engaged in commerce or in an industry affecting commerce to engage in a strike or refusal in the course of his employment to use, manufacture, process, transport, or otherwise handle or work on any goods, articles, materials, or commodities or to perform any services, or in any manner or by any means threaten, coerce, or restrain Cornell Construction Company, Patock Construction Company, Thomas H. Barham Company, Inc. or any other person engaged in commerce or in an industry affecting commerce, where an object thereof is: (a) to force or require Cornell Construction Company, or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of Cherry Steel Corporation or to cease doing business with Cherry Steel Corporation; (b) to force or require Patock Construction Company, Thomas H. Barham Company, Inc., or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of County of Ocean or to cease doing business with County of Ocean; and (c) to force or require County of Ocean or any other person to cease using, selling, handling, transporting, or otherwise dealing in the products of Jaden Electric, a Division of Farfield

Company, or to cease doing business with Jaden Electric, a Division of Farfield Company.

LOCAL 400, INTERNATIONAL BROTHERHOOD OF ELECTRICAL WORKERS

DECISION

STATEMENT OF THE CASE

JAMES T. YOUNGBLOOD, Administrative Law Judge. The complaint, which issued on December 15, 1982, alleges that Local 400, International Brotherhood of Electrical Workers, engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act. The Respondent filed an answer to the complaint admitting certain allegations, including the jurisdictional allegations of the complaint, but denied that it engaged in the commission of any unfair labor practices. This matter was heard in Lakewood, New Jersey, on February 22, 1983. All parties were represented at the hearing, and thereafter the General Counsel and the Respondent filed post-trial briefs.

On the entire record in this matter, and from my observations of the witnesses and their demeanor, and after due consideration of the briefs herein, I make the following

FINDINGS AND CONCLUSIONS¹

I. THE EMPLOYER INVOLVED

Jaden Electric, a Division of Fairfield Company (herein called Jaden), a corporation duly organized under the laws of the Commonwealth of Pennsylvania, is engaged as an electrical contract or doing contracting work from its main office located in Lititz, Pennsylvania. During the past year Jaden has received more than \$50,000 from services performed outside the Commonwealth of Pennsylvania.

II. THE LABOR ORGANIZATION INVOLVED

The Respondent admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

III. THE ALLEGED UNFAIR LABOR PRACTICES

In early May 1982,² the Ocean County Board of Freeholders began the construction of a new Ocean County Criminal Justice Center, in downtown Toms River, New Jersey. This new center will include seven courtrooms, administrative offices, and a 200-bed jail facility. The

¹ The facts found herein are a compilation of the credited testimony, the exhibits, and stipulations of fact, viewed in light of logical consistency and inherent probability. Although these findings may not contain or refer to all of the evidence, all has been weighed and considered. To the extent that any testimony or other evidence not mentioned in this Decision may appear to contradict my findings of fact, I have not disregarded that evidence but have rejected it as incredible, lacking in probative weight, surplusage, or irrelevant. Credibility resolutions have been made on the basis of the whole record, including the inherent probabilities of the testimony and the demeanor of the witnesses. Where it may be required I will set forth specific credibility findings.

² Unless otherwise specified, all dates refer to 1982.

Criminal Justice Center (herein called the Project) has construction costs of \$21 million and an overall cost of \$24 million. The scheduled completion for this project is May 1984. The construction project is immediately adjacent to the existing county complex and borders on Hooper, Sheriff, and Horner, or sometimes called School, Streets.

Pursuant to open competitive bids the County of Ocean awarded contracts to the lowest bidders. Contracts were awarded to Patock Construction Company (herein called Patock), as general construction contractor; Cherry Steel Corporation (herein called Cherry), as structural steel contractor; Thomas H. Barham Company (herein called Barham), as plumbing and fire protection contractor, and heating, ventilation, and air-conditioning contractor; Harry C. Partridge, Jr. & Sons, Inc. (herein called Partridge), as detention work contractor, and Jaden was awarded the electrical contract. In all cases the contracts were awarded to the lowest bidder and, with the exception of Jaden, all of the contractors' employees were and are represented by labor organizations.

Within 10 or 12 days after construction began an 8-foot fence was erected enclosing the entire site, and immediately thereafter signs designating certain gates as reserved gates were installed. The construction project, rectangular in shape, is located immediately adjacent to the existing county complex. The construction project is bordered on the south, the longest portion of the rectangle, by Sheriff Street. It is bordered on the west by Horner or School Street, and is bounded on the east by Hooper Avenue. Sheriff Street intersects Hooper on the east and Horner or School Street on the west. At the present time you cannot enter Sheriff Street from the east because the fence that was installed immediately after construction began closes the street near the intersection of Hooper Avenue.

As indicated earlier, signs were placed at entrances to the project designating these entrances as reserved points. The signs were made from 4-by-8 foot sheets of plywood painted white, and lettered in black, with some lettering in red. All of the signs have large boldface print which is probably about 10 inches high.³ The wording on the signs, as erected in May, had not been changed at the time of the hearing.

The sign at gate 1, located at the intersection of Hooper Avenue and Sheriff Street, the southeast corner of the project, states that this gate is reserved for employees, suppliers, and deliveries of all contractors, except Jaden Electric. All Jaden Electric employees, suppliers, and deliveries must use gate 2.

Gate 2, the Jaden gate, is located at the southwestern corner of the project at the intersection of Horner Street and Sheriff Street. That sign states that the gate is reserved for only Jaden Electric employees, suppliers, and deliveries. No one else is permitted to enter and all others must use gates 1, 3, and 4.

Gate 3 is located at the northwestern corner of the project at Horner Street and some unidentified street. The sign at this gate, like the signs at gates 1 and 4, restricts the gate to employees, suppliers, and deliveries of

all contractors, except Jaden Electric. All Jaden Electric employees, suppliers, and deliveries are told to use gate 2. Gate 4 is located near the northeast corner of the project on Hooper Avenue.

At the beginning of the construction, Ocean County informed all of the contractors that the integrity of the gate system should be respected and the general contractor, pursuant to its management responsibilities under its contract, was made aware that the gate system's integrity should be preserved at all times. In addition, the county had on site an architect, James Hyres, who also monitored the gate system. There was no evidence presented which would indicate that the integrity of the reserved gates was destroyed.

On October 29, representatives of the Union⁴ handed out cards at the county office buildings across the street from the construction project which informed the public that Jaden was doing electrical work at the project, that Jaden is not a local contractor and does not employ local electricians. On November 29, pickets appeared at the construction project at gates 1, 2, and 4 around 7:30 to 7:45 a.m. There were approximately 12 pickets in front of gate 1 and approximately 8 in front of gate 4. Five or six of the pickets at Gate 1 and two or three pickets in front of gate 4 wore signs which stated:

JADEN
THE ELECTRICAL CONTRACTOR ON THIS
JOB PROVIDES
WAGES AND OTHER BENEFITS LOWER
THAN THOSE
ESTABLISHED AS STANDARD BY UNION
CONTRACTS IN THIS AREA.
PLEASE DO NOT DO THE WORK OF THIS
ELECTRICAL CONTRACTOR
ELECTRICIAN'S
LOCAL
UNION
400 IBEW
AFL-CIO

On November 29, the first day of the picketing, although scheduled to work, the employees of Patock, Cornell, and Barham did not work; however, the primary employees of Jaden did in fact work that day. On November 29, the County of Ocean sent a telegram to the Union advising it of the gate system in effect and that the Jaden gate was located on Hooper Avenue. This telegram was received on November 30. On November 30, the county sent a second telegram to the Union, advising of the error in the earlier telegram, and stating that the Jaden gate was in fact located at Horner and Sheriff Streets. This telegram was also delivered on November 30. Notwithstanding the notifications to the Union that the Jaden employees were using gate 2 at Horner and Sheriff Streets, the Union continued to picket at gates 1, 2, and 4 until December 8. Patock,

³ The signs are designated Jt. Exhs. 5 through 8.

⁴ Local 400, International Brotherhood of Electrical Workers, is herein referred to as either the Respondent or the Union.

Cornell, and Barham were scheduled to work during this period but only Jaden worked during this picketing.

On December 9 and 10 there were pickets with signs at only gate 2. However, an individual was stationed by the Union at gates 1 and 4. On Monday, December 13, work resumed on the project as all contractors and their employees who were scheduled to work returned. On December 27 there was picketing again at gates 1, 2, and 4 with the same signs. Again, although Patock, Cornell, and Barham employees were scheduled to work they did not work. The entire project was shut down, except for Jaden employees working. Sometime after December 27 the picket ended.

Discussion and Conclusions

In *Moore Dry Dock*, 92 NLRB 547 (1950), the Board set forth certain criteria for evaluating the legality of picketing in common situs situations. A common situs is normally one referred to as a location, such as a construction project, where the business of a primary employer, one with whom the union has a dispute, and the business of certain other employers and persons, come together in the construction of a building or several buildings. The employees of the various contractors, including the primary employer, are mingled together and the location of the union's dispute becomes one that is common to several employers.

In *Moore Dry Dock* the Board stated that if the picketing meets the following criteria it will be determined to be legal:

- (a) The picketing is strictly confined to times when the situs of the dispute is located on the secondary employer's premises;
- (b) At the time of the picketing the primary employer is engaged in its normal business on the situs;
- (c) The picketing is limited to places reasonably close to the location of the situs; and
- (d) The picketing discloses clearly that the dispute is with the primary employer.

Following the *Moore Dry Dock* decision, the Board with court approval reasoned that one way to localize a dispute in a common situs situation was by establishing separate or reserved gates for primary employers, their suppliers, and their employees. Gates may also be reserved for the secondary employers, their suppliers, and their employees, and the primary employees excluded from these gates. In such situations the picketing must be confined to an area reasonably close to the entrance of the reserved gate for the primary employer, its suppliers, and its employees. The primary employees must be restricted to this gate and not be permitted to obtain access to the construction site by using any other entrance. In these situations the Union normally is required to picket only at the reserved gate for the primary employer and if it extends its dispute beyond that it runs afoul of the law.

In this case it is clear that the reserved gate system was properly established and there is no evidence in this record to indicate that the gates were breached in any manner. Thus, the evidence indicates that the primary employees and suppliers for the primary employer were

restricted to, and in fact used, gate 2, the one reserved for them. Additionally, there was a fence erected around the entire perimeter of the project and the remaining gates to the project were properly restricted and access at these gates denied to the primary employer, its suppliers, and its employees. As I indicated there is no evidence to indicate that any of these secondary gates were contaminated by primary employees using them.

Notwithstanding the fact that there was a gate set aside and reserved for the primary employees, and that the primary employees only used that gate, the Union extended its picketing to gates 1 and 4, which were used exclusively by secondary employers, their suppliers, and their employees, with whom the Union had no dispute.

The Union contends that it is permitted to picket at gates 1 and 4 because gate 2 was remote and that its picketing was impaired at this gate. While this gate may not have been the ideal reserved gate for primary employees from the Union's standpoint, it certainly was sufficient to meet all the criteria set forth by the Board in those cases dealing with reserved gates. The gate was in an area where there was public traffic. The gate was large enough for the admission of any type vehicle and, as indicated, the primary employer, its suppliers, and its employees were restricted to that gate and so far as this record is concerned they in fact used that gate and that gate only. This argument as well as others presented by the Union fails to establish any legal justification for the Union's picketing at gates 1 and 4 reserved for the exclusive use of secondary employers and persons with whom the Union had no dispute.

It is obvious that the Union picketed at gates 1 and 4 because it wanted to spread its dispute with the primary employer to encompass the entire project, which in fact it did. The Union shut down the entire job except for the primary employer, the employer with whom the Union had its dispute. There can be little doubt that the Union's objective in picketing at gates 1 and 4 was to induce and encourage the employees of secondary employers to cease performing services for their employer in order to force those employers to cease doing business with the county and in turn cause the county to throw Jaden, the primary employer, off the project, thereby causing the county to engage the services of an electrical contractor whose employees were represented by the Union. It is my conclusion that the Union did not picket as close as possible to the location of the primary employees, but deliberately located its picketing at a strategic point where it would appeal to the employees of all employers having business at the construction site. Under these circumstances, and I find, it is clear that the Union engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

IV. THE EFFECT OF THE UNFAIR LABOR PRACTICES

The acts of the Respondent set forth above, occurring in connection with operations of Jaden and the other employers and persons involved in this proceeding, have a close, intimate, and substantial relationship to trade, traffic, and commerce among the several States and tend to

lead to labor disputes burdening and obstructing commerce and the free flow of commerce.

On the foregoing findings of fact and conclusions and on the entire record, I make the following

CONCLUSIONS OF LAW

1. The Respondent, Local 400, International Brotherhood of Electrical Workers, is a labor organization within the meaning of Section 2(5) of the Act.

2. Jaden Electric, a Division of the Fairfield Company, is an employer engaged in commerce within the meaning of Section 2(2), (6), and (7) of the Act.

3. Patock Construction Company, Cherry Steel Corporation, Thomas H. Barham Company, Inc., and Harry C. Partridge, Jr. & Sons, Inc., and Cornell Construction Company are employers and/or persons engaged in the construction industry.

4. At times material herein the Respondent has had a labor dispute with Jaden Electric.

5. At no time material herein has the Respondent had a labor dispute with any other employer or person on the County of Ocean construction project in Toms River, New Jersey.

6. By its picketing of the County of Ocean new construction project in Toms River, New Jersey, the Respondent has engaged in conduct violative of Section 8(b)(4)(i) and (ii)(B) of the Act.

7. The above-described unfair labor practices affect commerce within the meaning of Section 2(2), (6), and (7) and Section 8(b)(4)(i) and (ii)(B) of the Act.

THE REMEDY

Having found that Local 400, International Brotherhood of Electrical Workers, has engaged in and is engaging in unfair labor practices in violation of Section 8(b)(4)(i) and (ii)(B) of the Act, I shall recommend that it be ordered to cease and desist therefrom and take certain affirmative action designed to effectuate the policies of the Act.

Having found that the Respondent is engaged in a secondary boycott against Jaden Electric, it is my conclusion that an order should issue against this Respondent enjoining it from engaging in a secondary boycott against any employer or person where an object thereof

is to force or require a cessation of business between any employer or person and Jaden Electric.

On the foregoing findings of fact and conclusions of law and on the entire record, I issue the following recommended⁵

ORDER

The Respondent, Local 400, International Brotherhood of Electrical Workers, Wall, New Jersey, its officers, agents, and representatives, shall

1. Cease and desist from

(a) Picketing or in any other manner inducing or encouraging any individual employed by any employer or person to cease performing services or to engage in a strike or threatening or coercing any employer or person where an object thereof to force or require a cessation of business between any employer or person and Jaden Electric.

2. Take the following affirmative action.

(a) Post at its offices in Wall, New Jersey, and at other offices maintained by it, copies of the attached notice marked "Appendix."⁶ Copies of said notice, on forms provided by the Regional Director for Region 4, after being signed by the Respondent's authorized representative shall be posted by the Respondent immediately upon receipt and maintained for 60 consecutive days thereafter in conspicuous places including all places where notices to its members are customarily posted. Reasonable steps shall be taken by the Respondent to ensure that said notices are not altered, defaced, or covered by any other material.

(b) Notify the Regional Director in writing within 20 days from the date of this Order what steps Respondent has taken to comply.

⁵ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

⁶ If this Order is enforced by a Judgment of a United States Court of Appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."